IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 210 OF 2007.
IN
SUIT NO. 671 OF 2002.

Rashid Sattar Oomerbhoy. ... Plaintiff.
Versus.
Majid Oomerbhoy and others. ... Defendants.

Ms.Kiran Bagalia with Ms.Tasleem Saria and Ms.Deepa Mani i/by M/s.S.K.Srivastava & Co. for the Plaintiff.

Ms.Manjiri Shah i/by M/s.Thakore Jariwala & Associates for the Defendants Nos.1 and 8.

CORAM : ABHAY S.OKA, J.

DATED : 29th October, 2007.

P.C.:

1. I have heard the learned Counsel appearing for the Plaintiff and the learned Counsel appearing for Defendants Nos.1 and 8 and the 7th Defendant appearing in person. The prayers in the Chamber Summons read thus:

(a) That this Hon'ble Court may be pleased to quash and/or set aside the direction given by the learned Court Receiver, High Court, Bombay in the above suit on 16.12.2006 thereby directing the Plaintiffs to deposit an amount of Rs.20 lakhs to meet the expenses towards taxes and to deploy security guard on the suit property.

(b) That pending the hearing and final disposal of the above suit, this Hon'ble Court may be pleased to stay the operation and implementation of the direction given by the learned Court Receiver on 16.12.2006.

2. By an order dated 6th May 2004 passed by this Court in Notice of Motion No.644 of 2002 in Notice of Motion No.78 of 2003 in Suit No.671 of 2002, this Court appointed the Court Receiver, High Court, Bombay as the Receiver of the assets and properties of the Wakf Trust. In the said order, this Court noted that the parties to the suit have agreed that the properties and assets of the Wakf Trust shall be divided equally between Group-A and Group-B mentioned therein. The Court Receiver was appointed pending filing of the terms of settlement. The Court Receiver was directed to finalise the account of the Trust for the year 2001-2002 onwards. The Receiver was directed to collect the rent directly from the tenants of the Wakf properties after verifying their claims of tenancy. Clause (c) of the Minutes of the order in terms of which order was passed on 6th May 2004 reads thus:

(c) The parties shall extend their fullest co-operation to the Receiver and the

Chartered Accountant appointed by the Receiver. In case of no funds are available with the Wakf Trust or the same can not be arranged by the Wakf Trust within reasonable period then the Plaintiffs to initially bear the expenses of the Receiver subject to reimbursement by the Receiver on finalization of accounts of the Wakf Trust."

An order was passed by this Court on the same day in terms of the minutes of order. The said order reads thus:

"P.C.:

1. Order in terms of minutes marked as "X" for identification signed by parties. Clause (c) of the minutes are modified. Initially the plaintiff will bear costs. Liberty to apply for reimbursement from the funds available with the Court Receiver."

3. There is a further order dated 24th November 2006 passed on the Court Receiver’s Report No.140 of 2006. The relevant part of the said order reads thus:

"Accordingly, the aforesaid Plaintiff shall in

terms of order dated 6th May 2004, bear the costs initially subject to liberty reserved to the plaintiff to apply for reimbursement from the funds available with the Court Receiver."

In the meeting of the parties held on 16th December 2006 the first Assistant to the Court Receiver recorded the admitted position that a sum of over and above Rs.40 lakhs was the amount outstanding in respect of the property taxes in respect of the properties of which the Receiver has been appointed. In the said meeting, the first Assistant to the Court Receiver directed the Plaintiff to deposit an amount of Rs.20 lakhs to meet the expenses towards taxes to enable the Receiver to make payment thereof till the Rent Collector starts collecting the rent from the occupants in terms of the orders passed by this Court.

4. The prayer in the present Chamber Summons is to set aside the said direction issued to the first Assistant to the Court Receiver.

5. The learned Counsel appearing for the Plaintiff invited my attention to the affidavit filed by the 1st Defendant in Appeal No.249 of 2002. Her submission is that in the said affidavit, it is stated that the firm M/s.Ahmed Oomerbhoy of which the 1st Defendant is a

partner is a tenant of the said Trust in respect of four properties described in the said affidavit. She submitted that the said affidavit discloses that the firm is in arrears of rent to the tune of Rs.18 to Rs.19 lakhs. She submitted that as per the orders passed by this Court, the Court Receiver has to recover the rent amount from the firm of M/s.Ahmed Oomerbhoy and if the said amount of outstanding rent is recovered, the Plaintiff who is the beneficiary under the Trust will not be required to pay any amount towards property taxes. She submitted that the Court Receiver must recover arrears of rent from the said firm and if the arrears are recovered, sufficient funds will be available with the Court Receiver to pay the taxes. She invited my attention to the order dated 16th June 2006 passed on the Court Receiver's report dated 5th January 2006 and pointed out that the Receiver is under an obligation to collect the rent after verifications of claims of tenancy of the occupants and the amounts collected from the tenants can be paid over to the Municipal Corporation as property taxes. She submitted that the order dated 6th May 2004 directs the Plaintiff to pay costs of the Receiver which will not include the municipal taxes payable in respect of the property of which Receiver has been appointed. She pointed out that the Receiver is holding a very large amount of the said firm in another litigation to which all the partners of

the said firm are parties and therefore, it is possible for the Receiver to recover the amount of rent payable by the said firm and to pay the same towards taxes.

6. The learned Counsel appearing for the 1st and 8th Defendants submitted that in order dated 24th November 2006 as well as in order dated 10th July 2006 in Notice of Motion No.204 of 2007 this Court has directed the Plaintiff to comply with the direction contained in the order dated 6th May 2004. She, therefore, submitted that the direction of this Court dated 6th May 2004 has attained finality and therefore, the Plaintiff will have to pay the amount as directed by the First Assistant to the Court Receiver and to claim reimbursement thereof from the Receiver. She submitted that the partnership firm M/s.Ahmed Ommerbhoy is not the tenant in respect of all the premises mentioned in the affidavit dated 31st April 2007 filed in Appeal No.249 of 2003. The learned Counsel for the 1st and 8th Defendants submitted that the Court Receiver has held that the firm is a tenant only in respect of the ground floor premises.

7. The Respondent No.7 appearing in person has adopted the submissions of the learned Counsel appearing for the 1st and 8th Defendants.

8. The First Assistant to the Court Receiver pointed out that approximately a sum of Rs.40,79,696/- is payable by way of Municipal taxes in respect of the property at Two Tank Road, Byculla Division and Dadar and only an amount of Rs.84,351/- is paid for the time being. He pointed out that the amount lying in balance in the suit account is approximately Rs.13,50,600/-.

9. In the Minutes of order filed on 6th May 2004 and clause (c) thereof, it is stated that in case no funds are available with the Wakf Trust or the same cannot be arranged by the Wakf Trust within a reasonable period, then the Plaintiff will have to initially bear the expenses of the Receiver subject to reimbursement by the Receiver on finalisation of the accounts of the Wakf Trust. The said clause was modified by the order of this Court which records that initially the Plaintiff will have to bear the cost and the Plaintiff can seek reimbursement from the funds available with the Court Receiver. If clause (c) as modified by the order dated 6th May 2004 is read, it is apparent that this Court was of the view that the initial expenses of the Receiver will have to be borne and paid by the Plaintiff and later on he can apply for reimbursement of the said amount from the funds available with the Court Receiver. As of today the order dated 6th May 2004 has attained finality. The said direction contained in order dated

6th may 2004 has been again incorporated in order dated 24th November 2006 as well as 10th July 2007 passed by this Court. The cost of the Receiver as contemplated by this Court will naturally include property taxes of the property which are required to be paid by the Receiver.

10. It is obvious that the Court Receiver is under an obligation to recover the rent payable from the tenants of the property. The Receiver has recovered some amount towards rent. If the rent payable by any of the tenants/occupants is outstanding, the Receiver will have to take immediate steps for recovery of the amount, if necessary by taking out appropriate proceedings in that behalf and he can submit a report to this Court and seek necessary directions.

11. However, in view of the order dated 6th May 2004, for the time being the Plaintiff will have to pay a sum of Rs.20 lakhs to the Court Receiver for enabling the Receiver to pay taxes. As of today, the dues towards Municipal taxes are approximately Rs.40,79,696/-. It is suggested by ther Plaintiff that till today no proceedings have been taken out by the Bomaby Municipal Corporation for recovery of taxes. But there is no dispute that the taxes are payable and the Receiver will have to pay the taxes without waiting for Municipal Corporation to take any action. The order

dated 6th May 2004 passed by this Court provides that after paying the amount initially, the Plaintiff can always apply for reimbursement from the funds available with the Court Receiver. Therefore, there is adequate safeguard provided by this Court to the Plaintiff by permitting the Plaintiff to apply for reimbursement. The Minutes of order tendered by the parties provided that the reimbursement can be made only on finalisation of the account of the Wakf Trust. However, that portion has been modified by this Court by order dated 6th May 2004 which simply provides that the Plaintiff can apply for reimbursement from the funds available with the Court Receiver. Thus the Plaintiff can always apply for reimbursement without waiting for finalisation of the accounts of the Wakf Trust.

12. In view of the order dated 6th May 2004, the Receiver was justified in directing the Plaintiff to initially pay the sum of Rs.20 lakhs for meeting the expenses towards payment of taxes. Considering what is stated above, no case is made out for modification of the said direction.

13. Hence the Chamber Summons is disposed of by the following order:

(i) The Chamber Summons is dismissed with no

order as to costs.

(ii) The Court Receiver will take expeditious steps for recovery of the outstanding rent payable by the occupants of the property. In case any proceedings are required to be taken in that behalf, the Court Receiver is free to submit a report in that behalf and seek appropriate directions.

(iii) It is obvious that the payment of the said amount of Rs.20,00,000/- by the Plaintiff will be subject to order passed by this Court on 6th May 2005 which permits the Plaintiff to apply for reimbursement.

(iv) At this stage the learned Counsel appearing for the plaintiff pays for stay of operation of the order passed by this Court. My attention has been invited to the order dated 21st September 2007 passed on Court Receiver’s Report No.30 of 2007. By the said order, time has been granted to the plaintiff to deposit a sum of Rs.20 lakhs which expires on 19th November 2007. Time for payment of the sum of Rs.20 lakhs is extended till 3rd December 2007.

Judge.